

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CONRAD CAMPBELL,

Defendant-Appellant.

UNPUBLISHED

December 19, 2000

No. 216296

Oakland Circuit Court

LC Nos. 98-160187-FC

98-160188-FC

Before: Saad, P.J., and White and Hoekstra, JJ.

PER CURIAM.

Defendant was convicted by a jury, in two consolidated cases, of first-degree criminal sexual conduct (CSC I), MCL 750.520b; MSA 28.788(2). He was sentenced to concurrent terms of fifteen to thirty years' imprisonment. Defendant appeals as of right both convictions and sentences. We affirm.

Defendant first argues that the prosecution presented insufficient evidence to sustain his CSC I convictions. We disagree. When determining whether sufficient evidence has been presented to sustain a conviction, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could have found that the essential elements of the crime were proved beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992); *People v Godbold*, 230 Mich App 508, 522; 585 NW2d 13 (1998).

In relevant part, the CSC I statute, MCL 750.520b; MSA 28.788(2), provides:

(1) A person is guilty of criminal sexual conduct in the first degree if he or she engages in sexual penetration with another person and if any of the following circumstances exists:

* * *

(b) That other person is at least 13 but less than 16 years of age and any of the following:

(i) The actor is a member of the same household as the victim.

(ii) the actor is related to the victim by blood or affinity to the fourth degree.

(iii) The actor is in a position of authority over the victim and used this authority to coerce the victim to submit.

* * *

(e) The actor is armed with a weapon . . .

(f) The actor causes personal injury to the victim and force or coercion is used to accomplish sexual penetration. . . .

To convict defendant of CSC I, the jury had to find him guilty beyond a reasonable doubt under one of these three theories.

Upon review of the record, we conclude that testimony was presented that, if believed by the jury, would prove all elements of each of the above statutory subsections. The victim testified to the separate events in specific detail and the victim's family members and therapist testified that she suffered from nightmares, that she suffered physical and mental anguish as a result of the assaults, and that her behavior changed dramatically after the assaults. Although defendant contends that the victim's testimony was insufficient because he contradicted her testimony in interviews with the police, contradictory evidence should not necessarily be equated with insufficient evidence:

[T]he question is not whether there was conflicting evidence, but rather whether there was evidence that the jury, sitting as the trier of fact, could choose to believe and, if it did so believe that evidence, that the evidence would justify convicting defendant. . . . If the jury chose to believe the victim's testimony, they would be justified in convicting defendant of . . . criminal sexual conduct in the first degree. [*People v Smith*, 205 Mich App 69, 71; 517 NW2d 255 (1994), *aff'd sub nom People v Peterson*, 450 Mich 349; 537 NW2d 857 (1995), amended 450 Mich 1212 (1995).]

Questions of credibility are for the trier of fact to resolve and this Court will not resolve them anew on appeal. *People v Avant*, 235 Mich App 499, 506; 597 NW2d 864 (1999).

Here, because evidence was presented meeting each element of the crimes under each CSC I theory from which a rational trier of fact could conclude that defendant engaged in two counts of CSC I, sufficient evidence supported defendant's convictions.

Defendant next contends that he received ineffective assistance of counsel at trial. Specifically, defendant contends that his counsel was ineffective for failing to object to irrelevant and prejudicial testimony regarding defendant, for failing to request a mistrial, and for failing to request limiting instructions regarding prior similar acts. We disagree.

Because there was no *Ginther*¹ hearing at the trial level, this Court's review is limited to mistakes apparent from the record. *People v Snider*, 239 Mich App 393, 424; 608 NW2d 502 (2000). "To establish a claim of ineffective assistance of counsel, the defendant must show that counsel's performance was deficient and that there is a reasonable probability that, but for the deficiency, the factfinder would not have convicted the defendant." *Id.* at 423-424. Effective assistance of counsel is presumed, and the defendant bears a heavy burden of proving otherwise. *People v Williams*, 240 Mich App 316, 331; 614 NW2d 647 (2000). A defendant must also overcome the presumption that the challenged action or inaction was sound trial strategy. *People v Johnson*, 451 Mich 115, 124; 545 NW2d 637 (1996); *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994).

Defendant argues that counsel was ineffective in failing to object to the testimony of the victim's aunt that defendant had used a weapon against her on the day of the second incident because the testimony was irrelevant. Contrary to defendant's argument, the aunt's testimony was relevant because it supported the claim that the victim, who was present at that time, did not discuss the incidents because she feared defendant. With regard to defense counsel's failure to request a mistrial, counsel is not required to bring futile motions. *People v Flowers*, 222 Mich App 732, 737-738; 565 NW2d 12 (1997).

Defendant also contends that his trial counsel was ineffective because she failed to request a jury instruction regarding statements the victim made regarding similar sexual assaults committed on her by defendant. Again, defendant's argument is without merit. Defense counsel elicited these statements on cross-examination of the victim for purposes of attacking her story. Defendant has failed to overcome the presumption that the failure to request an instruction was sound trial strategy to avoid drawing the jury's attention to that testimony of additional sexual assaults by defendant.

Defendant's remaining claims concerning ineffective assistance have not been properly presented on appeal. Defendant simply asserts that counsel failed to conduct an adequate investigation, failed to present a defense at trial, failed to question witnesses before trial, failed to challenge the bindover, failed to challenge the expert witness' testimony, and failed to object to the systematic dismissal of African-American jurors by the prosecution – all in a cursory manner in the last paragraph of his supplemental brief without providing this Court with any citation to authority or to the record. As such, defendant has abandoned these issues. *People v Davis*, 241 Mich App 697, 700; 617 NW2d 381 (2000). A review of the record does not indicate any error affecting defendant's substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

In his supplemental brief, defendant challenges his sentence on the grounds that it lacks proportionality. Considering the circumstances of the defendant and the offense, defendant's sentences for CSC I do not violate the principle of proportionality. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990).

¹ *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).

Finally, defendant claims that he was denied the effective assistance of appellate counsel, and as such, this Court should consider the issues defendant raised in his in pro per supplemental brief. Because we have considered each issue raised in defendant's supplemental brief, a new appeal is unnecessary. *People v Brown*, 119 Mich App 656, 660-661; 326 NW2d 834 (1982) (Because the remedy for a claim of ineffective assistance of appellate counsel is a new appeal, and because this Court addressed all of defendant's other claims of error, it was unnecessary to address this issue).

Affirmed.

/s/ Henry William Saad

/s/ Helene N. White

/s/ Joel P. Hoekstra